DOCUMENT RESUME

ED 272 127 HE 019 588

AUTHOR	Olivas, Michael A.
TITLE	Legal Issues.
INSTITUTION	Association for the Study of Higher Education.
PUB DATE	86
NOTE	11p.; Prepared as part of the ASHE-ERIC Clearinghouse for Course Syllabi in Higher Education Project. For related documents, see HE 019 576-593.
PUB TYPE	Guides - Classroom Use - Guides (For Teachers) (052) -- Information Analyses (070)
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	Contracts; Course Content; Course Descriptions; Course Organization; Curriculum Development; *Educational Legislation; Federal Regulation; *Government School Relationship; Graduate Study; Higher Education; *Postsecondary Education as a Field of Study; *School Law; State Standards; *Student Rights; *Teacher Rights; Teaching Guides
IDENTIFIERS	*ASHE ERIC Higher Education Course Syllabi Project

ABSTRACT

Syllabi and texts used in courses on higher education law are reviewed. These courses are offered as part of graduate level studies in the field of higher education administration. A major gap appears to be the need for a current and frequently revised casebook. Four major topics that higher education law courses emphasize are as follows: the legal underpinnings of colleges, faculty legal issues, students and the law, and regulation of higher education. Of concern were: the relationship of private institutions to the states and the status of public institutions with varying amounts of autonomy; issues concerning academic freedom, collective bargaining, affirmative action, and tenure; matters of research and the legal implications for faculty; the demise of in loco parentis and the rise of a contractual relationship between students and colleges; the increasing role of the federal government in financing and regulating colleges and universities; and the increasing role of states and other external bodies, such as accrediting agencies. A reference list includes texts employed by faculty teaching this course. A list of members of the course syllabi network is included. (SW)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED272127

ASHE ERIC

Clearinghouse for Course Syllabi in Higher Education

LEGAL ISSUES

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

John Gardiner

Oklahoma State Univ

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☐ This document has been reproduced as received from the person or organization originating it.

☑ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

HE 019 588

A Project of the

Association for the Study of Higher Education

Committee on Curriculum, Instruction, and Learning

1986

LEGAL ISSUES

Michael A. Olivas
415 Farish Hall
Institute for Higher Education
Law and Governance
University of Houston
Houston, TX 77004
(713) 749-2557

Instruction in Higher Education Law

Higher Education Law is a rapidly changing field of study, with greatly expanding case resources and digest services. Unfortunately, the classroom materials have not developed accordingly, and through Fall, 1985, professors found themselves with four unsatisfactory alternatives:

1) a 1979 casebook that had not been updated since 1982;[1]

2) a 1978 treatise that had not been updated since 1980;[2]

3) a variety of other books, not updated since their publication in the late 1970's;[3]

4) makeshift materials photocopied from court reporters and journals.

A 1984 study, Teaching Higher Education Law, reviewed the available texts, and concluded: "Although the books noted in this section represent a diversity of approaches to teaching legal issues as they relate to higher education, a review of the materials presently available suggests a special need for reflection on the best methods for keeping textbook materials current. There is also a need for a comprehensive casebook especially created for introductory courses on law and higher education at the graduate level; and there will always be a need for new editions and new approaches to understanding the law of higher education."[4]

The Sorenson study, as well as other materials gathered from law and education scholars,[5] have established that higher education law courses tend to concentrate upon four major topics, and, depending upon the course materials and professors' preferences, cover these areas in varying detail: the legal underpinnings of colleges, faculty legal issues, students and the law, and regulation of higher education. These four areas are found in the Edwards and Nordin text, and correspond to the division of Kaplin's text.[6] While each of the textbooks mentioned earlier treats these topics differently, they share several features:

1) Colleges as legal entitites. Cases, commentary, and materials on the relationship of private institutions to the states, and the status of public institutions with varying amounts of autonomy. The approaches tend to be chronological, usually encompassing the Dartmouth[7] case and cases in a state where the university has attempted to expand or clarify favorably its autonomy.[8]

2) Legal issues concerning faculty. Issues concerning academic freedom, collective bargaining, affirmative action, and tenure are most frequently addressed here. Increasingly, matters of research and the legal implications for faculty are also addressed, reflecting the changing role of governments and industry in higher education funding.

3) The law concerning students. This section tends to be the largest, both due to the amount of litigation and due to the evolving nature of the institutional-student

relationship. The approaches here vary, but tend to incorporate the demise of *in loco parentis* and the rise of a contractual relationship. Inevitably, the reading includes *Tinker*,[9] *Horowitz*, and *Healy*, and incorporates significant attention to *Bakke*[10] and other student admissions and affirmative action cases. The Kemerer and Deutsch book and Millington text, of course, concentrate in the most detail upon student issues.

4) *Government and campus.* This area includes a range of items, not always treated similarly by the various authors reviewed or professors polled. However, the increasing role of the federal government in financing and regulating institutions is covered, as is the increasing role of states and other external bodies, such as accrediting agencies and the community. A reading of several dozen syllabi suggests that this large, fourth area is unevenly treated. In some courses, there is little time for such a treatment and the approach appears to be a grab-bag of loosely connected items, while in some courses, there is considerable depth evident in the detailed treatment of institutional relationships with state or federal governments. This is perhaps the area of greatest fluidity and variance, and potentially the place where most individual faculty preference is manifested.

In summary, this brief review updates Sorenson's extended survey of instructional materials, and finds four large areas of convergence among the several texts and syllabi reviewed. A major gap appears to be the need for a current and frequently revised casebook. Among the items listed in the reference list are the various texts employed by at least two professors responding to the surveys.

Michael A. Olivas
Colleges of Law and Education
University of Houston
December, 1985.

References

1. H. Edwards and V. Nordin, Higher Education & the Law (Cambridge: Institute for Educational Management, 1979) with 1982/3 cumulative supplement.

2. W. Kaplin, The Law of Higher Education (San Francisco: Jossey-Bass, 1978) with 1980 supplement.

3. P. Hollander, Legal Handbook for Educators (Boulder: Westview, 1978); F. Kemerer and K. Deutsch, Constitutional Rights and Student Life (St. Paul: West, 1979); J. Millington, The Law and the College Student (St. Paul: West 1979). Two other texts used by at least two classes were M. Olivas, ed. The Review of Higher Education, Vol.7, No.4 (1984) (special issue on higher education law) and P. Moots and E. Gaffney, Church and Campus (South Bend: University of Notre Dame Press, 1979).

4. G. Sorenson, Review Essay: Teaching Higher Education Law, Monograph 84-2 (Houston: IHELG, 1984); reprinted in Review of Higher Education 7, No.4 (1984), 295-319.

5. For this project, three groups of professors were asked to share their course materials or syllabi; over forty did so: ASHE members who teach law and higher education; AALS members who teach education law; members of the AALS Law and Education Section who teach higher education law. Thanks are due to Laura Rothstein and other colleagues who assisted in this project.

6. While this entry was being prepared, a second edition of Kaplin's 1978/1980 text was published. While it is far more comprehensive than even his excellent earlier work, the eight chapters still fit this typology.

7. Trustees of Dartmouth College v. Woodward, 17 U.S. 518 (1819) (state may not reconstitute chartered corporation trustees)

8. E.g., Regents of University of Michigan v. State of Michigan, 395 Mich. 52, 235 N.W.2d 1 (1975) (legislature cannot impose conditions upon appropriations to constitutional institutions if they "interfere with the management and control of those institutions.").

9. Tinker v. Des Moines I.C.S.D. 292 U.S. 502 (1969) (First Amendment extends to students' symbolic protest); Board of Curators v. Horowitz, 435 U.S. 78 (1978) (institutions are not required to hold full administrative hearing for academic dismissals); Healy v. James, 408 U.S. 169 (1972) (Colleges have heavy burden of proof for prior restraints on expression and student organizational privileges).

10. Bakke v. Regents of University of California, 438 U.S. 265 (1978) (institutions may use race as one of several criteria for admissions, but may not employ quotas).

ASHE ERIC

Clearinghouse for Course Syllabi in Higher Education

A group of Association for the Study of Higher Education (ASHE) members are forming a national higher education network for course syllabli. (See box.) The activity, sponsored by ASHE's Committee on Curriculum, Instruction and Learning, promises to be of great benefit to new and experienced teachers in higher education.

If you wish to participate, please send your latest course syllabi to the appropriate members of the network today. These individuals have committed their time and effort toward the following:

- syntheses reviewing course syllabi received with an evaluation of what is happening in each area (e.g., course titles, emphases, major works and resources in use, syllabi,models, trends, observations), along with a few exemplary syllabi to be made available via the ERIC Clearinghouse on Higher Education by the end of 1985
- abstracts for inclusion in an essay on "Course Syllabi as Instructional Resources," to appear in the 1986 edition of ASHE's Instructional Resources Handbook for Higher Education
- updates of the essay/abstract in four years.

NETWORK MEMBERS

Adult/Continuing Education	K. Patricia Cross, Harvard Univ., Grad. School of Ed., 406 Gutman Library, Cambridge, MA 02138
College Students	Carol L. Everett, Penn State Univ., 304 Old Main, University Park, PA 16802
Community College	Richard L. Alfred, University of Michigan, 2007 School of Ed. Bldg, Ann Arbor, MI 48109
Comparative/International	Phillip G. Altbach, SUNY-Buffalo, Higher Education Program, 468 Baldy Hall, Buffalo, NY 14260
Current Issues	Robert J. Silverman, Ohio State Univ., 301 Ramseyer Hall, 29 W. Woodruff Ave., Columbus, OH 43210
Curriculum/Instruction	Clifton F. Conrad, College of Education, Univ. of Arizona, 1415 N. Fremont, Tucson, AZ 85719
Educational Policy	Patricia Crosson, Univ. of Massachusetts-Amherst, Amherst, MA 01003
Faculty Issues	Martin Finkelstein, Seton Hall Univ., McQuaid Hall, South Orange, NJ 07079
Finance	Kern Alexander, University of Florida, Inst. for Ed. Finance, Gainesville, FL 32611
Foundations/History/Philosophy	John Thelin, School of Education, 323 Jones Hall, College of William and Mary, Williamsburg, VA 23185
Governance	John J. Gardiner, Oklahoma State Univ., 309 Gunderson Hall, Stillwater, OK 74078
Innovative/Nontraditional	Dianne S. Peters, Montana State Univ., 213 Reid Hall, Bozeman, MT 59717
Institutional Research/Planning	Dennis Viehland, Ctr. for the Study of Higher Ed., Univ. of Arizona, 1415 N. Fremont, Tucson, AZ 85719
Legal Issues	Michael A. Olivas, Univ. of Houston, Inst. for Higher Ed. Law & Gov., 415 Farish, Houston, TX 77004
Management Information Systems	Robert G. Cope, Univ. of Washington, M219 Miller Hall, DQ-12, Seattle, WA 98195
Organization/Administration	Ellen Earle Chaffee, Board of Higher Education, Capitol Bldg., 19th Floor, Bismarck, ND 58505
Public Policy	Jack H. Schuster, Claremont Graduate School, Higher Ed. Program, Claremont, CA 91711
Research/Evaluation	James L. Morrison, 120 Peabody Hall 037A, Univ. of North Carolina, Chapel Hill, NC 27514
Sociology	Zelda Gamson, RF #1, Box 11A, Chilmark, MA 02535 and David S. Webster, Univ. of Pennsylvania, 3700 Walnut St/C1, Philadelphia, PA 19081
Student Personnel Administration/ Counseling/Human Development	Larry H. Ebbers, N244 Quadrangle, Iowa State Univ., Ames, IA 50011
Teacher Education	Jack Hruska, Univ. of Massachusetts, School of Education, Amherst, MA 01003
Vocational/Technical	Clyde Ginn, Univ. of Southern Mississippi, Box 5177, Southern Sta., Hattiesburg, MS 39406

To establish a viable clearinghouse, your help is needed. Please flood members of the network with your course syllabi and suggestions. Help establish a higher education clearinghouse for course syllabi.